

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement ("Agreement") is entered into by the State of Michigan ("the State"), Bristol-Myers Squibb Company ("BMS"), and Apothecon, Inc ("Apothecon"), through their authorized representatives, (hereinafter referred to as "the Parties").

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. WHEREAS, at all relevant times, BMS, a Delaware corporation headquartered in New York, New York marketed and sold pharmaceutical products in the United States;

B. WHEREAS, at all relevant times, Apothecon was a wholly-owned subsidiary of BMS;

C. WHEREAS, on or about June 23, 1995, Ven-A-Care of the Florida Keys, Inc. ("Ven-A-Care"), Zachary T. Bentley and T. Mark Jones (collectively, the "VAC 1 Relators") filed a *qui tam* action in the United States District Court for the Southern District of Florida captioned United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Bristol Myers Squibb Co., Civil Action No. 95-1354 (S.D. Fla.); and, on or about December 11, 2002, Ven-A-Care, Bentley, and Jones filed a Fourth Amended Complaint in the Southern District of Florida under the same caption and case number and this Fourth Amended Complaint sets forth the current allegations in the *qui tam* action;

D. WHEREAS, on or about April 12, 2000, Ven-A-Care, Zachary T. Bentley, T. Mark Jones, John M. Lockwood, and Luis B. Cobo (the "VAC 2 Relators") filed a *qui tam* action in the United States District Court for the District of Massachusetts captioned United States ex rel. Ven-A-

Care of the Florida Keys, Inc. v. Apothecon, Inc., Bristol-Myers Squibb Co., Civil Action No. 00-10698-MLW (D. Mass.); and, on or about February 15, 2005, Ven-A-Care, Bentley, and Jones filed a Third Amended Complaint in the same court under the caption United States ex rel. Ven-A-Care of the Florida Keys, Inc. v. Apothecon, Inc. Bristol-Myers Squibb Co., Civil Action No. 00-10698-MEL (D. Mass.);

E. WHEREAS, Ven-A-Care, Zachary T. Bentley, and T. Mark Jones filed a *qui tam* action in The Superior Court of the State of California for the City and County of San Diego captioned The State of California, ex rel. Ven-A-Care of the Florida Keys, Inc., Zachary T. Bentley and T. Mark Jones v. Apothecon, Inc., Bristol-Myers Squibb Company, et al., Case No. 722855;

F. WHEREAS, Ven-A-Care, Zachary T. Bentley, and T. Mark Jones filed a *qui tam* action in The Circuit Court of the Second Judicial District in and for Leon County, Florida captioned The State of Florida ex rel. Ven-A-Care of the Florida Keys, Inc., Zachary T. Bentley and T. Mark Jones v. Bristol-Myers Squibb Company et al., Civil Action No. 98-3032 E;

G. WHEREAS, Ven-A-Care, T. Mark Jones, Luis E. Cobo, and John M. Lockwood filed a *qui tam* action in The District Court, 201st Judicial District, Travis County, Texas captioned The State of Texas ex rel. Ven-A-Care of the Florida Keys, Inc., T. Mark Jones, Luis E. Cobo, and John M. Lockwood v. Apothecon, Bristol-Myers Squibb Company et al., No. GV0046;

H. WHEREAS, on or about October 17, 2000, Carol Forden filed a *qui tam* action in the United States District Court for the Northern District of New York captioned United States ex rel. Forden v. Bristol Myers Squibb; that action was transferred to the United States District Court for the District of Massachusetts on or about February 4, 2004; and on or about February 3, 2005, Forden filed a Third Amended Complaint captioned United States, State of California, State of Florida,

Commonwealth of Massachusetts, State of New Mexico, State of Texas, Commonwealth of Virginia, ex rel. Forden v. Bristol Myers Squibb, Civil Action No. 04-11216-RGS (D. Mass.);

I. WHEREAS, on or about September 24, 2001, Kathy Cokus filed a *qui tam* action in the United States District Court for the District of Massachusetts captioned United States ex rel. Cokus v. Bristol-Myers Squibb Co., Civil Action No. 01-11627-RGS (D. Mass.);

J. WHEREAS, on or about February 3, 2005, Joseph Piacentile filed a *qui tam* action in the United States District Court for the District of Massachusetts captioned United States, California, Delaware, Florida, Hawaii, Illinois, Louisiana, Massachusetts, Nevada, New Hampshire, New Mexico, Texas, Tennessee, and Virginia and the District of Columbia ex rel. Piacentile v. Bristol-Myers Squibb Co., Civil Action No. 05-10196-MLW (D. Mass.);

K. WHEREAS, on or about October 25, 2006, Michael Wilson filed a *qui tam* action in the United States District Court for the Central District of California styled United States, State of Arkansas, State of California, State of Delaware, District of Columbia, State of Florida, State of Hawaii, State of Illinois, State of Louisiana, State of Massachusetts, State of New Mexico, State of Nevada, State of Tennessee, State of Texas, State of Virginia ex rel. Wilson v. Bristol Myers Squibb, Inc.; and, subsequently, that action was transferred to the United States District Court for the District of Massachusetts and is currently pending in that district under Civil Action No. 06-12195-NG (D. Mass.);

The *qui tam* actions identified in Paragraphs II(C) through (K) shall be referred to collectively as the “Civil Actions.”

L. WHEREAS, at all material times, BMS participated in the Medicaid Rebate Program, 42 U.S.C. § 1396r-8, which is part of the federal Medicaid Program, Title XIX of the Social Security

Act, 42 U.S.C. §§ 1396-1396v. As a participant in the Medicaid Rebate Program, BMS entered into a rebate agreement with the Health Care Finance Administration ("HCFA"), now known as the Centers for Medicare and Medicaid Services ("CMS"), and BMS's drug products were covered by state Medicaid plans that provided medical assistance for outpatient prescription drugs. 42 U.S.C. §§ 1396a(10)(A); 1396d(a)(12), and 1396r-8(a)(1). Under the Medicaid Rebate Program and its rebate agreement with HCFA, BMS generally agreed: (i) to report quarterly to HCFA its average manufacturer price and, for single source and innovator multiple source drugs, best price for its drug products, as defined by 42 U.S.C. §§ 1396r-8(k)(1) and 1396r-8(c)(1)(C); and (ii) to pay quarterly rebates to each state based on the product of (a) the units of each dosage form and strength paid for under the State Medicaid plan during the rebate period as reported by the state, and (b) the greater of the difference between the average manufacturer price and best price, or a minimum rebate percentage of the average manufacturer price, as further defined in 42 U.S.C. § 1396r-8(c)(1).

M. WHEREAS, BMS and Apothecon have entered into or will be entering into a separate settlement agreement (hereinafter referred to as the "Federal Settlement Agreement and Release") with the United States Department of Justice (hereinafter referred to as the "United States") which will be receiving settlement funds from BMS pursuant to Paragraph III 1(A) below for the Covered Conduct described in Paragraph O below.

N. WHEREAS, the State alleges that BMS and Apothecon caused to be submitted claims for payment for its drugs to its Medicaid Program, established pursuant to or in connection with Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (the "Medicaid Program").

O. WHEREAS, the State contends that it has certain civil claims against BMS and Apothecon as specified in Paragraph 4 below for allegedly engaging in the following conduct

(hereinafter the "Covered Conduct"):

- (1) The State contends that, during the period from January 1994 through December 2001, Apothecon and BMS knowingly and willfully offered and paid illegal remuneration such as stocking allowances, price protection payments, trade show payments, market share payments, prebates, and free goods to purchasers such as retail pharmacies and wholesalers and/ or their employees and agents (collectively "purchasers") related to Apothecon's products in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2). Furthermore, the State contends that, during this time period, Apothecon and BMS knowingly caused the submission of false and/or fraudulent claims to Medicaid by inducing these purchasers to purchase Apothecon's and BMS's products;
- (2) The State contends that, during the period from January 1991 through December 2000, Apothecon and BMS knowingly set, reported, and maintained, or caused to be set, reported, and maintained, false, fraudulent and inflated Wholesale List Prices, Direct Prices, and Average Wholesale Prices (the "Reported Prices") for certain drugs listed in Attachment A (the "Apothecon Covered Drugs") that were substantially higher than prices that were widely and commonly available, and knowingly used the artificial spread between the false, fraudulent and inflated Reported Prices and the actual acquisition costs of the Apothecon Covered Drugs in marketing, promoting and selling the Apothecon Covered Drugs to its existing and

potential customers. The State further contends that Apothecan and BMS knew the false and fraudulent reporting and marketing schemes would cause their customers to submit false and fraudulent claims to Medicaid for reimbursement that were substantially higher than the customers' actual acquisition costs for the Apothecan Covered Drugs;

- (3) The State contends that, during the period from January 1999 through December 2003, BMS knowingly and willfully offered and paid illegal remuneration to physicians and to some physician assistants and nurse practitioners, through consulting fees and expenses for participating in National Consulting Conferences, Regional Consulting Conferences, Clinical Advisory Councils, District Advisory Boards, Interactive Training Sessions, Preceptorships, and similar consulting programs, in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)(2). The State further contends that, during this time period, BMS knowingly caused the submission of false and/or fraudulent claims to Medicaid by inducing these physicians, physician assistants, and nurse practitioners to prescribe and/or to recommend the prescribing of the BMS drugs listed in Attachment B;

- (4) The State contends that, during the period from January 2002 through December 2005, BMS knowingly promoted the sale and use of Abilify (aripiprazole) for pediatric use (i.e. for patients younger than 18) and to treat dementia-related psychosis, uses for which the United States Food and Drug Administration ("FDA") has not approved Abilify. The State contends that

BMS knowingly and willfully offered and paid illegal remuneration in the form of consulting arrangement fees to physicians to induce them to prescribe Abilify. The State contends that BMS's promotion of Abilify for pediatric use and to treat dementia-related psychosis violated the Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. §§ 331(a) & (d). Furthermore, the State contends that, during the relevant time period, these uses of Abilify were not medically accepted indications, as defined by 42 USC §1396r-8(k)(6) (uses approved under the FDCA or included in or approved for inclusion in specified drug compendia), and that certain State Medicaid Programs did not cover Abilify dispensed for these uses. In addition, the State contends that, during this time period, BMS knowingly caused false and/or fraudulent claims to be submitted to its Medicaid program for Abilify for pediatric use and for dementia-related psychosis;

- (5) The State contends that, from Third Quarter 1996 through Second Quarter 1997, BMS knowingly misreported its best price to CMS and underpaid its Medicaid rebates for Serzone by omitting the price of Serzone that was private-labeled for Kaiser from its determination of best price;
- (6) The State contends that, during the period from January 1993 through December 2002, BMS knowingly set, reported and maintained, or caused to be set, reported, and maintained false, fraudulent and inflated Wholesale List, Direct Prices, List Prices, and Average Wholesale Prices (the "Reported Prices") for the drugs listed in Attachment C (the "AWP Covered Drugs")

that were substantially higher than prices that were widely and commonly available, and knowingly used the artificial spread between the false, fraudulent and inflated Reported Prices and the actual acquisition costs of the AWP Covered Drugs in marketing, promoting and selling the AWP Covered Drugs to its existing and potential customers. The State contends that BMS knew that the false and fraudulent reporting and marketing schemes would cause their customers to submit false and fraudulent claims to its Medicaid program for reimbursement that were substantially higher than the customers' actual acquisition costs for the AWP Covered Drugs.

P. WHEREAS, this Agreement is neither an admission of facts or liability by BMS or Apothecon, nor a concession by the State that its claims are not well founded.

Q. WHEREAS, BMS and Apothecon deny the contentions of the State and the relators as set forth herein and the Civil Actions and further deny any liability or wrongdoing related to those contentions:

R. WHEREAS, to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these claims, the Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth below in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. BMS agrees to pay to the United States, the States that will be receiving settlement

funds pursuant to this paragraph (the "Medicaid Participating States"), and the PHS entities collectively, the sum of four hundred and ninety nine million dollars (\$499,000,000.00), of which four hundred-three million, two hundred thousand, forty-three dollars (\$403,200,043.00) represents payment to Medicaid, plus interest in an amount of 4.5% per annum on the Federal Settlement Amount and Medicaid State Settlement Amount as further set forth in subparagraphs A and B below from January 1, 2007, and continuing until and including the day before complete payment is made (the "Settlement Amount"). This sum shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the Effective Date of this Agreement subject to the terms of the Federal Settlement Agreement and Release and the Medicaid State Settlement Agreements. This debt is to be discharged by payments to the United States and the Medicaid Participating States under the following conditions:

A. BMS shall pay to the United States the sum of three hundred seventeen million, four hundred thirty-six thousand, and eighty-one dollars (\$317,436,081.00), plus interest in an amount of 4.5% per annum (\$39,135.96 per day) from January 1, 2007, and continuing until and including the day before complete payment is made (the "Federal Settlement Amount"). The Federal Settlement Amount shall be paid pursuant to the terms of the Federal Settlement Agreement and Release. BMS shall also pay the Public Health Services ("PHS entities") \$124,000.00 pursuant to the terms of the Federal Settlement Agreement and Release.

B. BMS shall pay to the Medicaid Participating States the sum of one hundred eighty-one million, four hundred and thirty-nine thousand, and nine hundred and nineteen dollars (\$181,439,919.00), plus interest in an amount of 4.5% per annum (\$22,369.31 per day) from January 1, 2007, until and including the day before complete payment is made (the "Medicaid

State Settlement Amount”) under the terms and conditions of the Medicaid State Settlement Agreements. This Medicaid State Settlement Amount shall be paid no later than seven business days after BMS receives written payment instructions from the National Association of Medicaid Fraud Control Units’ (“NAMFCU”) Negotiating Team for the Medicaid Participating States and following the earliest of the dates on which the following occurs: (1) the Medicaid State Settlement Agreements are fully executed by the Parties and delivered to BMS’s attorneys; or (2) as otherwise agreed in writing by BMS and the NAMFCU Negotiating Team. If neither condition is satisfied within 200 days subsequent to the execution of the Federal Settlement Agreement and Release, BMS’s offer to resolve this matter with the Medicaid Participating States shall become null and void absent written agreement between BMS and NAMFCU to extend the 200 day period.

C. The total portion of the Settlement Amount paid by BMS in settlement for the Covered Conduct to the State is \$10,990,484.70, consisting of a portion paid to the State under this agreement and another portion paid to the federal government as part of the Federal Settlement Agreement and Release. The individual portion of the Medicaid State Settlement Amount allocable to the State under this agreement is the sum of \$4,767,229.34, plus applicable interest, (the “Individual State Settlement Amount”).

2. Contingent upon the Medicaid Participating States receiving the Medicaid State Settlement Amount, the Medicaid Participating States agree to pay, as soon as feasible after receipt, agreed upon amounts that have been addressed via side letters with relators Ven-A-Care, Forden, Cokus, Piacentile, and Wilson.

3. BMS has entered into a Corporate Integrity Agreement with HHS/OIG in connection

with this matter (the "CIA") and will provide certified Pricing Information to the State and/or the appropriate national commercial drug price reporting service (as directed by the Addendum to this agreement) pursuant to the terms of said CIA. This State Agreement is a Related State Settlement Agreement as that term is used in Section I of the CIA. In accordance with Section III (K) of the CIA, BMS contends that the Pricing Information reported to the State Medicaid Program pursuant to that CIA is confidential commercial or financial information and proprietary trade secrets and the State agrees to afford it the maximum degree of confidentiality permitted by state law. All information provided to the State Medicaid program pursuant to this Agreement shall be made available to the State's Medicaid Fraud Control Unit upon request subject to the same confidentiality protections as set forth above. No claim or cause of action may be brought by the State against BMS or Apothecon, their successors or affiliates contending that the Pricing Information as described in this paragraph was improperly calculated or reported unless: such Information is inconsistent with Pricing Information for the same products reported by BMS or Apothecon, their successors or affiliates to other state or federal government entities; or the Centers for Medicare and Medicaid Services (CMS) concur that such Information was improperly calculated or reported under federal laws and regulations.

4. Subject to the exceptions in Paragraphs 5 below, and in consideration of the obligations of BMS set forth in this Agreement, conditioned upon BMS's payment in full of the Settlement Amount, and subject to Paragraph 15 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), the State, on behalf of itself, and its officers, agents, agencies, political subdivisions and departments, agrees to release BMS and Apothecon, their predecessors, and their current and former

parents, affiliates, divisions, subsidiaries, successors and assigns, and their current and former directors, officers, and employees, from any civil or administrative monetary claim that the State or any of its political subdivisions has or may have for any claims submitted or caused to be submitted to the State Medicaid Program for the Covered Conduct. The payment of the Settlement Amount fully discharges all such entities and individuals from any obligations to pay Medicaid-related restitution, damages, and/or any fine or penalty to the State for the Covered Conduct.

5. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following claims or liabilities: (a) any criminal, civil, or administrative claims arising under State revenue codes; (b) any criminal liability not specifically released by this Agreement; (c) any civil or administrative liability that BMS has or may have under any state statute, regulation, or rule not covered by this release; (d) any liability to the State (or any agencies thereof) for any conduct other than the Covered Conduct; (e) any claims based upon obligations created by this Agreement; (f) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from the State's Medicaid program; (g) any express or implied warranty claims or other claims for defective or deficient products and services provided by BMS; (h) any claims for personal injury or property damage or for other consequential damages arising from the Covered Conduct; (i) any claim based on a failure to deliver items or services due; or (j) any liability of individuals, including officers and employees, who receive written notification that they are the target of a criminal investigation, are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement; or (k) with the exception of liability for the conduct and the programs described in Paragraphs II O(3) and O(4), any liability that may attach from BMS's conduct or activity to market or promote any of the drugs listed in Attachment B

(except Abilify) for uses not approved by the Food and Drug Administration.

6. The State represents that it has no present intention of initiating or pursuing a cause of action against BMS or ApotHEcon for the improper reporting of drug prices when the basis for such cause of action is the markup of BMS or ApotHEcon prices by a price reporting service, such as First Data Bank, Red Book, and Medi-Span, acting independently of BMS and ApotHEcon.

7. In consideration of the obligations of BMS set forth in this Agreement, and the Corporate Integrity Agreement and Addendum thereto that BMS has entered into with the Office of the Inspector General, United States Department of Health and Human Services ("HHS-OIG") in connection with this matter (collectively, "CIA"), conditioned on BMS's payment in full of the Settlement Amount, except as reserved in Paragraph 5 above and subject to Paragraph 15 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement or any payment under this Agreement), the State agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from the State's Medicaid program against BMS or ApotHEcon, their predecessors, and their current or former parents, affiliates, divisions, subsidiaries, successors, and assigns for the Covered Conduct. The Medicaid Fraud Control Unit for the State further agrees to refrain from recommending, causing or attempting to cause any administrative action or sanction, including debarment, by any other government agency of the State for the Covered Conduct. Nothing in this Agreement precludes the State from taking action against BMS or ApotHEcon in the event that BMS or ApotHEcon is excluded by the federal government, or for conduct and practices other than the Covered Conduct. The State does not to release BMS or ApotHEcon from any claims or actions which may be asserted by private payors or insurers, including those that are paid by a state's Medicaid program on a capitated basis.

8. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

9. The State agrees to dismiss with prejudice any lawsuit specifically as to BMS and/or BMS's present or former subsidiaries, including but not limited to Apothecon and Oncology Therapeutics Network Corp., including any *qui tam* "whistleblower" lawsuit, in which the state has intervened and/or has the authority to dismiss, currently pending against BMS and/or those subsidiaries in the courts of the State for the Covered Conduct. In addition, all *qui tam* "whistleblower" lawsuits brought by Ven-A-Care of the Florida Keys, Inc., Zachary T. Bentley, T. Mark Jones, John M. Lockwood, Luis B. Cobo, Carol Forden, Kathy Cokus, Joseph Piacentile, Daniel Richardson, Phillip Barlow and Michael Wilson against BMS and/or BMS's present and former predecessors, successors, assigns, parents, subsidiaries (including but not limited to Apothecon and Oncology Therapeutics Network), affiliates, divisions, officers, directors, agents, and employees, shall be dismissed with prejudice in their entirety. This agreement is contingent upon dismissal with prejudice of all such "whistleblower" lawsuits. To the extent any such *qui tam* "whistleblower" lawsuit is not dismissed with prejudice, this Agreement shall become null and void and the Settlement Amount allocable to the State under this Agreement, as set forth in paragraph III 1(C), shall be returned to BMS.

10. BMS waives and shall not assert any defense it may have to criminal prosecution or administrative action relating to the Covered Conduct, which defense may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment of the Constitution, this agreement bars a remedy sought in such criminal prosecution or administrative action.

11. In consideration of the obligations of the State set forth in this Agreement, BMS and Apothecon, on behalf of themselves and their predecessors, their current and former parents, affiliates, divisions, subsidiaries, successors and assigns fully and finally releases, waives and discharges the State, its agencies, political subdivisions, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which BMS or Apothecon have asserted, could have asserted, or may assert in the future against the State, its agencies, political subdivisions, employees, servants, and agents, related to or arising from the State's investigation and prosecution of the Covered Conduct.

12. The Settlement Amount that BMS must pay pursuant to Paragraph 1 above will not be decreased as a result of the denial of claims for payment now being withheld from payment by the State's Medicaid program or any other state payer, related to the Covered Conduct; and, if applicable, BMS agrees not to resubmit to the State's Medicaid program or any other state payer, any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal or cause the appeal of any such denials of claims.

13. BMS agrees that it shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors. BMS waives any causes of action against these beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims for payment covered by this Agreement.

14. BMS expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount. Further, the Parties expressly warrant

that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to BMS within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

15. In the event BMS commences, or another party commences, within 91 days of the Effective Date of this Agreement or any payment made hereunder, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of BMS's debts, or seeking to adjudicate BMS as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for BMS or for all or any substantial part of BMS's assets, BMS agrees as follows:

A. BMS's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and BMS shall not argue or otherwise take the position in any such case, proceeding or action that: (i) BMS's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) BMS was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the State hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to BMS.

B. If BMS's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may rescind the releases provided in this Agreement, and bring any civil and/or administrative claim, action or proceeding against BMS for the claims that would otherwise be covered by the releases provided in this Agreement. If

the State chooses to do so, BMS agrees that for purposes only of any claims, actions or proceedings referenced in this first clause of this Paragraph, (i) any such claims, actions, or proceedings brought by the State (including any proceedings to exclude BMS from participation in the State's Medicaid program) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that BMS shall not argue or otherwise contend that the State's claims, actions, or proceedings are subject to an automatic stay; (ii) BMS shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings which are brought by the State within 90 calendar days of written notification to BMS that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available before July 1, 2003; and (iii) the United States and the Participating States have a valid claim against BMS in the amount of four hundred and ninety nine million dollars (\$499,000,000.00) plus applicable multipliers and penalties and they may pursue their claims, inter alia, in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action or proceeding; and

C. BMS acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

16. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

17. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

18. In addition to all other payments and responsibilities under this Agreement, BMS agrees to pay all reasonable travel costs and expenses of the NAMFCU Negotiating Team. BMS will pay this amount by separate check or wire transfer made payable to the National Association of Medicaid Fraud Control Units after the respective Medicaid Participating State executes this agreement or as otherwise agreed by the parties.

19. This agreement does not constitute an admission by any person or entity, and shall not be construed as an admission by any party or entity, with respect to any issue of law or fact.

20. This Agreement is governed by the laws of the State of Michigan.

21. The undersigned BMS and Apothecon signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

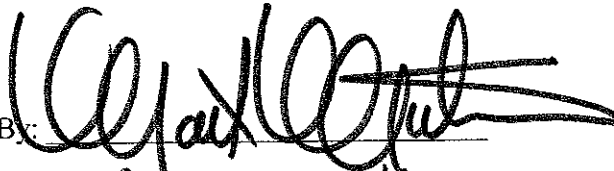
22. The "Effective Date" of this Agreement shall be on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

23. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

24. This Agreement shall not be amended except by written consent of the Parties.

25. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same Agreement.

THE STATE OF MICHIGAN

By: 

Dated: 11/2/2007

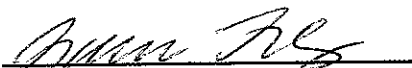
Name: Mark Matius
Title: Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL

By: James R. Brandell

Dated: 10/22/2007


Name: JAMES R. BRANDELL
Title: Director, Bureau of Medicaid Financial Mgmt. & Administrative Services
Medicaid Program

BRISTOL-MYERS SQUIBB COMPANY

By: 

Dated: 5/1/08

SANDRA LEUNG
Senior Vice President, General Counsel and Secretary
Bristol-Myers Squibb Company

By: 

Dated: 4/16/08

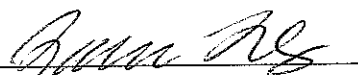
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Counsel to Bristol-Myers Squibb Company

By: 

Dated: 4/22/08

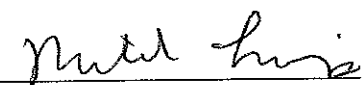
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APOTHECON, INC.

By: 


Dated: 5/1/08

SANDRA LEUNG
Secretary
Apothecon, Inc.

By: 

Dated: 4/16/08

STEPHEN J. IMMELT
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By: 

Dated: 4/22/08

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Attachment A ("Apothecon Covered Drugs")

Albuterol

Amantadine

Amoxicillin

Captopril

Captopril/HCTZ

Cefaclor

Cefadroxil

Cefanex

Cephalexin

Doxycycline

Doxycycline Hyclate

Estradiol

Etodolac

Trimox

Polymox

Potassium Chloride

Attachment B ("The BMS Drugs")

Tequin	Dovonex
Pravachol	Taxol
Glucovance	Paraplatin
Avapro	Zelnorm
Avalide	Vaniqa
Plavix	Maxipime
Serzone	Azactam
Glucophage	Coumadin
Glucophage XR	Stadol NS
Abilify	
Monopril	
Monopril HCT	
Metaglip	
Avandia	
BuSpar	
Pravigard	
Cefzil	
Reyataz	
Videx	
Videx EC	
Zerit	
Sustiva	

Attachment C ("AWP Drugs")

Amikin

Blenoxane

Cytosan

Mutamycin

Rubex

Taxol

Vepesid

ADDENDUM

Designation of Reporting Service

1) The State of Michigan requests that the Pricing Information referred to in Section III 3 of this State Agreement and the CIA be sent to First Data Bank (a national commercial drug price reporting service).

If during the time period covered by the CIA (5 years from the effective date thereof) the State changes or supplements its commercial drug price reporting service, the State may notify BMS at the address below in writing of said change and the effective date thereof. BMS shall then promptly commence reporting the Pricing Information to the subsequent commercial drug price reporting service in accordance with Sections III.K.1 and III.K.2 of the CIA.

BMS contact information for the above:

Designation of State Medicaid Contact

2) The State of Michigan requests that the Pricing Information referred to in Section III 2 of this State Agreement and the CIA be sent to the State of Michigan Medicaid program c/o:

Ruth Shockey, Manager Program Investigation Section
Name
4005 Pine St. P.O. Box 30479 Lansing, MI 48909-7979
Address
(517) 335-5223 - wk phone
Phone/fax/email
(517) 241-9087 - fax
Shockey@miichigan.gov